

B.2. Application Form for Consideration of a Plan or Project

The Delta Reform Act creates the Delta Stewardship Council (Council) as an independent agency of the state (Wat. Code §85200). SBX7 1 (effective February 3, 2010) gives the Council several responsibilities, many linked to a comprehensive “Delta Plan,” which the Council is charged to develop, adopt, and commence implementation of by January 1, 2012. The Council is also charged with developing an Interim Plan “...that includes recommendations for early actions, projects, and programs” (Wat. Code § 85084). The Council has set August 27, 2010, as the date for adoption of the Interim Plan. The Council uses the framework established in the Interim Plan to make recommendations based on its responsibilities under SBX7 1. After the Delta Plan is adopted, the Council decisions will become determinative.

1. Applicant Information

Request: Consideration as an early action: Enforcement Audit and Plan

Consultation re plan: _____

Consultation re: possible covered action: _____

Other (please specify): _____

Applicant Name:

Coalition for a Sustainable Delta

Legal status (city, special district, firm, individual, etc.): Non-profit organization

Address of applicant:

915 “L” Street, #C-438, Sacramento, CA 95814

Contact information: Name of responsible individual:

Michael Boccadoro

Role (officer, attorney, etc.): Spokesperson

Address: 925 L Street, Suite 800 Sacramento, CA 95814

Email: mboccadoro@dolphingroup.org

Telephone: 916-441-4383

Legally Responsible Entity Name (if different than Applicant):

Legal status (city, special district, firm, individual, etc.): _____

Address of applicant:

Contact information: Name of responsible individual:

Role (officer, attorney, etc.): _____

Address:

Email:

Telephone:

Plan or project purpose narrative, including legal authority. If an action is “urgent,” provide the rationale for urgency.

Enforcement of existing laws is the logical starting point for any action under the Delta Plan. In order to guide action under the Delta Plan, the Delta Stewardship Council (Council) should conduct an audit of (1) existing enforcement obligations of state agencies; (2) existing enforcement activities; and (3) enforcement resources, including an assessment of what resources are needed to fully meet obligations. Legal counsel should also prepare an analysis regarding the universe of available enforcement tools. Utilizing this information, the Council should prepare a plan, with deadlines, and for eventual inclusion into the Delta Plan, to implement full enforcement of existing laws. The Council should also engage with federal partners to encourage enforcement by federal agencies. This activity will allow the Council to identify enforcement activities to be taken under the Delta Plan and to identify those issues for which there is no responsible enforcing agency. This proposed action is urgent because it must be prepared in advance—and for—the Delta Plan.

Plan or project physical location and description (include geo-referencing latitude and longitude for projects):

N/A

2. Plan or Project Review by Public Agencies

Local Government Discretionary Approval(s):

Yes _____ No X If yes, describe: _____

Delta Protection Commission Consistency Approval(s):

Yes _____ No X If yes, describe: _____

Bay Conservation and Development Commission Permit:

Yes _____ No X If yes, describe: _____

State Lands Commission:

Yes _____ No X

- 1 **CalTrans:**
- 2 Yes _____ No X
- 3 **State Water Resources Control Board Permit:**
- 4 Yes _____ No X
- 5 **Regional Water Quality Control Board:**
- 6 Yes _____ No X Regional Board Number: _____
- 7 **California Dept. of Toxic Substances Control:**
- 8 Yes _____ No X
- 9 **California Department of Fish and Game Streambed Alteration Permit:**
- 10 Yes _____ No X
- 11 **DF&G Take Authorization:**
- 12 Yes _____ No X
- 13 **Other DF&G Permit:**
- 14 Yes _____ No X
- 15 **U.S. Army Corps of Engineers:**
- 16 Yes _____ No X Public Notice Number: _____
- 17 **U.S. Fish and Wildlife Service: Take Authorization**
- 18 Yes _____ No X
- 19 **Biological Opinion:**
- 20 Yes _____ No X
- 21 **NOAA Fisheries Service: Take Authorization**
- 22 Yes _____ No X
- 23 **Biological Opinion**
- 24 Yes _____ No X
- 25 **U.S. Coast Guard:**

1 Yes _____ No X

2 **Federal Funding:**

3 Yes _____ No X

4 **Describe any history of consideration by any other governmental agency and provide documentation**
5 **of any actions taken.**

6 A comprehensive audit of Delta-related enforcement obligations, activities, and shortfalls, and the creation of an enforcement
7 plan has not been undertaken.

8

9 **3. Environmental Impact Documentation (must be completed**
10 **by all applicants)**

11 **a. Is the project statutorily or categorically exempt from the need to prepare any environmental**
12 **documentation?**

13 Yes X No _____

14 If “Yes,” please attach a statement that identifies and supports this statutory or categorical exemption.

15 **b. Has a government agency other than the Council, serving as the lead agency, adopted a negative**
16 **declaration or certified an environmental impact report or environmental impact statement on the**
17 **project?**

18 Yes _____ No N/A

19 If “Yes,” attach a copy of the document. If the environmental impact report or statement is longer than
20 ten pages, also provide a summary of up to ten pages. If “No,” provide sufficient information to allow
21 the Council to make the necessary findings regarding all applicable policies. The certified document
22 must be submitted prior to action on the application.

23 **4. Assessment against Delta Reform Act Policy Objectives**

24 Assess the proposed plan or project against the eight policy objectives listed below which “the
25 legislature declares are inherent in the coequal goals for management of the Delta” (WC Section 85020).
26 Provide a brief summary for the rationale for each assessment and reference to any supporting
27 documentation (include URL links as appropriate).

28 **(a) Manage the Delta’s water and environmental resources and the water resources of the state**
29 **over the long term.**

30 Positive X Negative _____ Neutral _____ Unknown _____ Not Applicable _____

31 Rationale, magnitude of effect (if positive or negative) and documentation:

32 An enforcement audit and plan will allow the Council to identify activities that should be taken under the
33 Delta Plan to ensure that parties meet existing obligations to protect and manage environmental and water
resources of the state. An audit will identify when state agencies have failed to act, when an issue is not
covered by a responsible agency, or where agencies lack the necessary funding or tools to act.

(b) Protect and enhance the unique cultural, recreational, and agricultural values of the California Delta as an evolving place.

Positive X Negative _____ Neutral _____ Unknown _____ Not Applicable

Rationale, magnitude of effect (if positive or negative) and documentation:

An enforcement audit will improve enforcement of existing laws that protect and enhance the cultural, recreational and agricultural values of the California Delta. Enforcement of existing laws to protect the Delta ecosystem will also contribute to the protection of the unique values of the Delta.

(c) Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy estuary and wetland ecosystem.

Positive X Negative _____ Neutral _____ Unknown _____ Not Applicable

Rationale, magnitude of effect (if positive or negative) and documentation:

Enforcement serves as the foundation of the effort to address other stressors. Many stressors, such as poor water quality and predation by non-native sport fish, fall under existing obligations of state and federal agencies. Before the Delta Plan creates new obligations, shortfalls in the enforcement of existing laws should be documented and improved. Examples of existing laws that should be considered are enforcement of National Pollutant Discharge Elimination System and section 401 Water Quality Certifications issued pursuant to the federal Clean Water Act and Waste Discharge Requirements issued pursuant to the Porter-Cologne Water Quality Control Act, implementation and enforcement of Total Maximum Daily Loads, halting of illegal water diversions, and addressing violations of the California Endangered Species Act.

(d) Promote statewide water conservation, water use efficiency, and sustainable water use.

Positive X Negative _____ Neutral _____ Unknown _____ Not Applicable

Rationale, magnitude of effect (if positive or negative) and documentation:

An enforcement audit will identify and address shortcomings in enforcement of existing laws that address improved water conservation, efficiency and sustainable use. For example, an enforcement audit will identify enforcement issues related to water rights and water diversions in the Delta.

(e) Improve water quality to protect human health and the environment consistent with achieving water quality objectives in the Delta.

Positive X Negative _____ Neutral _____ Unknown _____ Not Applicable _____

Rationale, magnitude of effect (if positive or negative) and documentation:

An enforcement audit will identify and address shortcomings in enforcement of existing laws that address water quality violations under the federal Clean Water Act and the Porter-Cologne Water Quality Act and identify opportunities related to improving, establishing and enforcing point discharge limits .

(f) Improve the water conveyance system and expand statewide water storage.

Positive _____ Negative _____ Neutral _____ Unknown _____ Not Applicable X

Rationale, magnitude of effect (if positive or negative) and documentation:

(g) Reduce risks to people, property, and state interests in the Delta by effective emergency preparedness, appropriate land uses, and investments in flood protection.

Positive X Negative _____ Neutral _____ Unknown _____ Not Applicable

Rationale, magnitude of effect (if positive or negative) and documentation:

An enforcement audit will identify and address shortcomings in enforcement of existing laws, such as DFG's Lake and Streambed Alteration Program (Fish & G. Code, § 1600), related to the reduction of risks and appropriate land uses.

(h) Establish a new governance structure with the authority, responsibility, accountability, scientific support, and adequate and secure funding to achieve these objectives.

Positive X Negative _____ Neutral _____ Unknown _____ Not Applicable _____

Rationale, magnitude of effect (if positive or negative) and documentation:

Ensuring full enforcement of existing laws and identifying enforcement gaps and needed resources will improve the accountability of all agencies operating in the Delta. A comprehensive understanding of the responsibilities of the agencies operating in the Delta will assist the Council in drafting a plan that supports an improved governance structure in the Delta.

5. Assessment of Administration and Implementation Processes

Cost of Project/Plan: Please provide your best estimate of the total cost of the project or plan you are proposing. If this is a Plan, please provide an estimate of the annual operational or enforcement costs projected for the activity. Please list all sources used for developing the cost estimates

This action will take staff time. As a necessary component to creating an effective Delta Plan, the enforcement audit should be considered a part of the ongoing Delta Plan preparation process. Because staff and consultants are already engaged in the drafting of the Delta Plan, this activity will not require additional funding. In addition, Council should request that State agencies operating in the Delta, including the SWRCB, RWQCBs, DFG, etc. assist by providing necessary information.

Financing (provide information on public and private sources of funding, including funds on hand or legally pledged or obligated and the sources of those funds):

This action requires no additional funding beyond what has already been committed for staff and consultant time to prepare the Delta Plan.

Identify any public agencies (federal, state and local) whose actions or decisions are essential for the proposed action to succeed. Provide evidence of their approval and support of the proposed action:

None, except for the Delta Stewardship Council. Cooperation (in the form of information) by State agencies with activities in the Delta would be helpful, but not necessary.

If real property must be acquired or use altered for the success of the proposed action, identify the owners of that property and information on how ownership or use change will occur:

N/A

Provide a time line for the proposed plan or project, including major milestones through completion:

This enforcement audit—including a request for information from state agencies—would be undertaken immediately, so that the resulting information and the enforcement plan could be incorporated into the June 2011 draft Delta Plan.

Describe how success or failure of the plan or project will be determined, including measures proposed, time frame and public agency responsible for judging success:

Successful action would be measured by the completion of detailed enforcement plan to be included as a component in the Delta Plan (December 2011).

Describe the major benefits that can result from the proposed plan or project, including identification of beneficiaries and any information on the magnitude and timing of benefits received:

A better understanding of available enforcement tools, existing enforcement responsibilities of state agencies, enforcement activities, enforcement gaps, and needed enforcement resources and funding will assist the Delta Stewardship Council in drafting a more effective Delta Plan.

If the proposed plan or project fails, what is done? What additional costs could be incurred and how will they be financed? Identify any lasting effects or changed options for future policy making:

The failure to understand and consider enforcement as an important tool for the Delta Plan will compromise the Delta Stewardship Council's mission to achieve the co-equal goals.

6. Scientific justification (to address requirement for Council use of best available science, Water Code section 85302(g)):

Attach description of scientific justification for the proposed plan or project and provide any pertinent documents. Address the criteria identified in Section 3 when preparing the scientific justification. Provide complete list of all scientific references cited.

None

7. Applicant certifications and authorizations

I certify that all of the information submitted is complete and accurate to the best of my knowledge and that all attached exhibits are full, complete and correct. I certify that I understand that omitted or insufficient information can delay consideration of this application. I certify that this application is not complete until accepted by the Council at a regularly scheduled meeting. I authorize the Council, its staff or other authorized personnel to share this information publicly and authorize their collection of additional information relevant to this application.

M. Boccadoro 9-20-10

Signature of applicant or applicant's representative Date

Printed name: Michael Boccadoro Title: Spokesperson

Insert for Section 3.a. - Statement Regarding Application of the California Environmental Quality Act:

Conducting an audit of existing enforcement obligations and responsibilities is not a project for the purpose of CEQA because it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment. (Cal. Pub. Resources Code, § 21065; CEQA Guidelines, § 15378(b)(5).) CEQA only applies to those government agency actions that have the potential for resulting in direct physical changes or reasonably foreseeable indirect changes in the environment.

Even if undertaking such an audit could be categorized as a “project” for purposes of CEQA, there are a number of applicable categorical exemptions, including enforcement actions (CEQA Guidelines, § 15321), actions undertaken by a regulatory agency to protect natural resources and the environment (CEQA Guidelines, §§ 15307; 15308), and information collection activities (CEQA Guidelines, § 15305). In addition, ongoing projects are statutorily exempt from CEQA (CEQA Guidelines, § 15261) and an audit of ongoing enforcement activities would be properly categorized as an ongoing activity because the authorities being studied already exist.